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Attorney for Defendant  
RYAN CARROLL

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO DIVISION**

UNITED STATES OF AMERICA

Plaintiff,

vs.

RYAN CARROLL

Defendant.

No. CR-13-00566-EMC

**DEFENDANT RYAN CARROLL'S  
SENTENCING MEMORANDUM**

Date: November 18, 2015

Time: 2:30 p.m.

Ct: The Honorable Edward M. Chen

Defendant Ryan Carroll submits the following memorandum in support of his request for a sentence of one hundred and eighty months of incarceration, pursuant to the Plea Agreement.

This sentence is "sufficient, but not greater than necessary" to achieve the purposes of sentencing that are set forth in 18 U.S.C § 3553(a)(2). Based on the factors set forth in the Presentence Report ("PSR"), the sentence is sufficient, under the Sentencing Guidelines.

**I. PLEA AND ADVISORY GUIDELINE RANGE**

*U.S. v. Carroll, Defendant's Sentencing Memorandum*  
CR-13-00256-EMC

Mr. Carroll pled guilty to a violation of using a firearm in furtherance of a crime of violence causing murder, 18 U.S.C § 924(j). The parties reached a plea agreement in this case under Federal Rules of Criminal Procedure 11(c)(1)(A) and 11(c)(1)(C). The parties stipulated in the plea agreement that Mr. Carroll's base offense level is 35, and that there is also grounds for an additional downward departure. The Probation Officer's recommendation agrees with the adjustment in the offense level based on USSG § 2A1.1, commentary n. 2(B), and also finds that a variance is appropriate under 18 USSG § 3553(a), based on Mr. Carroll's history and his efforts to proactively engage in activities that "establish a healthy foundation for his release." (Dkt. No. 207 at p.23, final PSR) These are factors, based on the Guidelines, that support the sentence to which the parties have agreed and that the Court indicated it accepted.

## **II. FACTUAL BACKGROUND SUPPORTING VARIANCE UNDER 18 U.S.C. SECTION 3553(a)**

Section 3553(a)(1) is a "broad command to consider 'the nature and circumstances of the offense and the history and characteristics of the defendant.'" *Gall v. U.S.*, 552 U.S. 38, 49 n.6 (2007). The *Gall* Court considered the defendant's rehabilitation, family connections, lack of further criminal activity, and efforts to better himself when affirming a sentence that was a substantial variance from the guidelines. There, the lower court found that "'imprisonment would be counter effective by depriving society of the contributions of the Defendant, who, the Court has found, understands the consequences of his criminal conduct and is doing everything in his new power to forge a new life.'" *Id.* at 44.

Mr. Carroll deeply regrets the choices he made that have led him to this point. At the time of the offense, he had fallen into a lifestyle that is not uncommon for those who suffer childhood trauma, neglect, and abuse. He coped with his problems with drugs, and he did not have any guidance to help him make good decisions or change the direction of his life. All of this, however, does not excuse his conduct that led to the death of the victim, and Mr. Carroll carries this burden. He has accepted responsibility for his conduct, and believes that his post-

1 offense rehabilitation will allow him to become a productive and positive member of the  
2 community after his incarceration.

3 Ryan Carroll is a person who has faced significant loss and trauma in his life that no one  
4 could bear without a support network, and Mr. Carroll did not have this. Mr. Carroll's history is  
5 fairly described in the final Presentence Report. Likewise, as indicated in the PSR, the instant  
6 offense was by far the most serious crime in his criminal history.

7 Mr. Carroll well understands the seriousness of the offense. Prior to his incarceration, he  
8 was trying to turn his life around and was attending community college.<sup>1</sup> He has taken steps to  
9 rehabilitate while he has been in custody, as noted in the PSR, and he will continue to do so. He  
10 has a plan to continue his education in custody and when released. He understands that he must  
11 make education, work, and sobriety the focus, so that he can lead a productive life.

12 Importantly, this crime occurred when Mr. Carroll was very young, just 23 years old. He  
13 is older now, and he has spent years thinking about the crime he committed. He has had time to  
14 think about how his difficult youth affected him, and he has made efforts to rid himself of  
15 addiction. The most important thing for Mr. Carroll in preventing recidivism will be his ability  
16 to obtain further education and employment opportunities. He has shown a willingness to further  
17 his education and an ability to gain employment. His engagement with proactive social groups  
18 during incarceration demonstrates his leadership abilities and his ability to commit to work and  
19 positive action.

20 While the seriousness of the offense is significant, no sentencing goals will be achieved  
21 by a prison sentence longer than fifteen years. As the Probation Officer noted, Mr. Carroll's  
22 release will be at an age when criminal behavior is much less likely. A one hundred eighty  
23 month sentence is a significant time period which will punish Mr. Carroll greatly, and it will  
24 certainly deter him from further recidivism, because he understands the positive contributions he  
25 can make to his community when he is free.

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26  
27  
28 <sup>1</sup> Mr. Carroll's Edmonds Community College Transcript is attached as Exhibit A.

Finally, Mr. Carroll is remorseful and ashamed that he made these decisions and is before this Court, and he regrets that he took part in an offense that took someone's life. Mr. Carroll knows that he will be incarcerated for his actions, but also knows and is grateful that he will have a second chance. He will do all he can to learn how to cope with his problems, make better choices, and set goals for himself. He is determined to put his life back on a positive and productive course, which is leading a law-abiding life, with work and education. Because this offense was a great aberration with respect to Mr. Carroll's history, this Court can be assured Mr. Carroll will be deterred from committing any further criminal acts by a sentence of one hundred and eighty months.

#### IV. RESTITUTION

Restitution in this matter is controlled by the Mandatory Victims Restitution Act ("MVRA"), 18 U.S.C. 3663A. Additionally, "[f]ederal courts have no inherent power to award restitution, but may do so only pursuant to statutory authority." *United States v. Follet*, 269 F.3d 996, 998 (9th Cir. 2001).

Here, the victim's mother has requested restitution for five years of *her* lost income, totalling \$750,000.00, which she did not gain because of her early retirement. She indicates that she retired early due to the toll that cancer treatment along with pain, suffering, and shame took on her, resulting from her son's murder. However, the confines of § 3663A do not permit the Court to make an order for her lost wages. *See, United States v. Cienfuegos*, 462 F.3d 1160, 1163-1164 (9th Cir. 2006) (holding that the victim's estate may make a restitution claim only for the victim's lost wages); 18 U.S.C. § 3663A(b)(2)(C). As such, no restitution for the victim's mother's lost wages may be ordered.

The victim's mother also requests restitution in the amount of \$10,000.00 for prescription drugs. There is no indication of whether these are cancer drugs or drugs related to her psychological stress. Regardless, she cannot recover this via restitution.<sup>2</sup> First and foremost, she

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<sup>2</sup> Note that § 3663A does not provide for recovery of tort-like damages, such as emotional distress, pain and suffering, and loss of consortium.

1 is not the victim in this matter. Second, even if the Court were to consider her a “victim,” the  
 2 MVRA only allows for restitution orders for psychological care when there has been bodily  
 3 injury to the victim, and she did not suffer any physical injury. *See*, 18 U.S.C. 3663A(b)(2)(A).

4 Regarding the storage costs of \$2150.00, there is no sufficient documentation or  
 5 explanation for how this cost falls within the MVRA’s purview, and it cannot be recovered. *See*,  
 6 18 U.S.C. § 3663.

7 Regarding the restitution claim of \$2000.00 for the car, Mr. Carroll is not liable for this,  
 8 because he was not convicted of any offense resulting in damage to or loss or destruction of  
 9 property of a victim.” 18 U.S.C. § 3663A(b)(1). The MVRA clearly states that “when  
 10 sentencing a defendant *convicted of an offense* described in subsection (c), the court shall order, .  
 11 . . that the defendant make restitution to the victim of the offense or, if the victim is deceased, to  
 12 the victim’s estate.” 18 U.S.C. § 3663A(a)(1)

13 Mr. Carroll submits that, under 18 U.S.C. § 3663A(b)(3), he is liable for the costs of the  
 14 victim’s funeral expenses of \$4000.00.

15 Mr. Carroll was unaware of the amount of restitution until after the time of the plea,<sup>3</sup> and  
 16 no sufficient justification or documentation has been provided to justify the amount of the  
 17 restitution, for many of the claimed expenses. It is the government’s burden to demonstrate the  
 18 amount of loss. *Cienfuegos*, 462 F.3d at 1168-69.

19 If the Court is considering awarding the victim’s mother restitution covering her lost  
 20 wages, prescription drugs, or storage, Mr. Carroll requests a future hearing on this matter, so that  
 21 both sides may fully brief this issue after receipt of additional documentation.

22 Mr. Carroll requests that the Court go forward with the sentencing on November 18,  
 23 2015, even if it reserve the restitution hearing for a later date.

## 24 **V. REQUEST FOR DESIGNATION**

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27 <sup>3</sup> The mother’s victim impact statement declaration of loss is dated August 28, 2015.

1 Mr. Carroll requests that the Court recommend that he be designated by the Bureau of  
2 Prisons to FCI Florence, because he hopes to reconnect with his family after sentencing, and this  
3 prison is in close proximity to Southern Illinois, where his family resides, and because it offers  
4 educational programs and work programs that he would like to participate in.

5 Mr. Carroll also requests that the Court recommend to the Bureau of Prisons that he be  
6 designated to FCI Sheridan, because it is near to the Seattle area where he has a community and  
7 a history of employment, and because it offers educational programs and work programs that he  
8 would like to participate in.

9 Mr. Carroll further requests that the Court make a recommendation to the Bureau of  
10 Prisons that the Bureau of Prisons waive the Public Safety Factors that may be associated with  
11 this case. The reason for this is that Mr. Carroll hopes to gain college credits or professional  
12 certificates while he is in prison, and he will be ineligible for many of the prisons with good  
13 programming if the public safety factors are not waived.

14 **VI. CORRECTION OF PSR**

15 Undersigned counsel provided documentation to the Probation Officer that Mr. Carroll  
16 has obtained his GED, and Mr. Carroll requests that the Court order that the Presentence Report  
17 be amended to reflect this. (Exhibit A)

18 **CONCLUSION**

19 Based on the above, the defendant respectfully requests that this Court sentence him to  
20 one hundred eighty months of imprisonment, pursuant to the Plea Agreement.

21  
22 Dated: November 11, 2015

Respectfully Submitted,

23  
24 /s/  
25 SEVERA KEITH  
26 Attorney for Defendant  
27  
28

# EXHIBIT A

*U.S. v. Carroll, Defendant's Sentencing Memorandum*  
CR-13-00256-EMC



## EDMONDS COMMUNITY COLLEGE

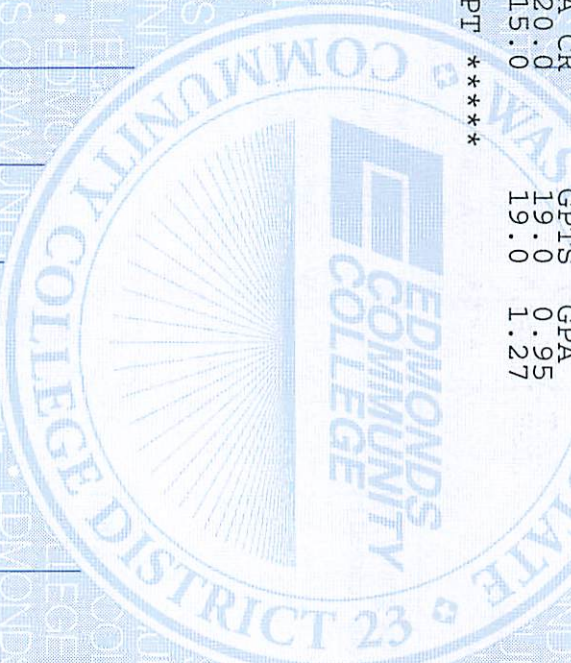
CARROLL RYAN C 359780567 10/07/15 PAGE 1  
 EDMONDS COMMUNITY COLLEGE  
 20000 68TH AVE WEST  
 LYNNWOOD WA 98036

## TRANSCRIPT / GRADE RECORD

OFFICIAL TRANSCRIPT WHEN SIGNED AND SEALED

INFORMATION FROM THIS RECORD  
 MAY NOT BE RELEASED TO ANY  
 OTHER PARTY WITHOUT OBTAINING  
 CONSENT OF THE STUDENT

CARROLL RYAN C  
 LYNNWOOD  
 WA 98036

COURSE	COURSE TITLE	GRADE	CREDIT HRS.	GRADE POINT	COURSE	COURSE TITLE	GRADE	CREDIT HRS.	GRADE POINT
ANTH& 104 ENGL 100 MATH 060 QUARTER:	***** FALL 09 ***** WORLD PREHISTORY: CD INTRO TO COLLEGE WRITING INTRODUCTION TO ALGEBRA P/S CR CR ERN GPA CR 0.0 10.0 15.0	1.5 2.3 0.0	5.0 5.0 5.0 19.0	7.5 11.5 0.0 1.27					
POLS& 202 QUARTER:	***** WINTER 10 ***** AMERICAN GOVERNMENT P/S CR CR ERN GPA CR 0.0 0.0 5.0	0.0	5.0 GPTS 0.0	0.0 GPA 0.00					
CUMULATIVE: COLLEGE LEVEL	P/S CR CR ERN GPA CR 0.0 10.0 15.0		GPTS 19.0	GPA 0.95 1.27					
***** END OF TRANSCRIPT *****									
									
THIS COLLEGE IS ACCREDITED BY THE ASSOCIATION OF SECONDARY AND HIGHER EDUCATION									
NAME BIRTHDAY 06/22 PROGRAM	RYAN C ENTERED 09 AS - TRACK 1	STUDENT ID 955280376	PREVIOUS NAME	HIGH SCHOOL	YEAR 04	TO	CARROLL RYAN C 4925 181ST PL SW LYNNWOOD	WA 98037	

The official signature of the Registrar is white and is imposed upon a light blue background. Reject document as official if signature is distorted.

Rae Ellen Reas, Registrar



**Confidentiality of Student Records:** In compliance with the Family Educational Rights and Privacy Act of 1974, this information is released on the condition that the recipient “will not permit any other party to have access to such information without the written consent of the student.”

4.0 - 3.9	A	Highest Achievement
3.8 - 3.5	A-	
3.4 - 3.2	B+	
3.1 - 2.9	B	High Achievement
2.8 - 2.5	B-	
2.4 - 2.2	C+	
2.1 - 1.9	C	Acceptable Achievement
1.8 - 1.5	C-	
1.4 - 1.2	D+	
1.1 - 1.0	D	Minimum standard-acceptable achievement
0.9 - 0.7	D-	
0.0	E/F	Less than acceptable achievement

Course	Cr	Grade	Grade Pts
Mgmt 118	3	2.0	(3X2)= 6
History 105	5	3.0	(5X3)=15
Psychology 100	5	4.0	(5X4)=20
Totals	13		41

**Course Numbering System:**

100 - 299 College level courses applicable to Associate Degrees

&	Denotes WA State Common Course number
#	High school credit
*	Grade not submitted in time to process (1976-77 to present)
G	Course challenge (1976-77 to present)
H	Articulation Agreement
I	Incomplete
K	Credit awarded by assessment of Experiential Learning
L	Advanced placement
N	Audit (1977-78 to present)
R	Course repeated
S	Satisfactory
U	Unsatisfactory
V	Instructor initiated withdrawal
W	Official withdrawal
X	Expunged - Academic Renewal approved

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13117213



# UNOFFICIAL SCORE REPORT FOR THE GENERAL EDUCATIONAL DEVELOPMENT TESTS

## CANDIDATE INFORMATION

Name: RYAN T CARROLL  
Address: 509 N WILLOW  
TOLUCA, IL 61369

Date of Birth: 06/22/1984  
Identification Number: 359780567  
Issue Date: 09/09/2004

<u>TEST NAME</u>	<u>TEST FORM</u>	<u>TEST DATE</u>	<u>STANDARD SCORE</u>		<u>PERCENTILE RANK</u>	
			Score for this Date	High Score to Date	Percent for this Date	High Percent to Date
Language Arts, Reading	IH	08/20/2004	570	570	76%	76%
Language Arts, Writing	IH	08/20/2004	430	430	24%	24%
Mathematics	IH	08/20/2004	520	520	58%	58%
Science	IH	08/20/2004	540	540	66%	66%
Social Studies	IH	08/20/2004	630	630	90%	90%
STANDARD SCORE TOTAL .....				2,690		
PASSED CONSTITUTION TEST. ....				Yes		

**Congratulations! Based on your highest GED scores to date you <DO QUALIFY> for an Illinois High School Equivalency Certificate.**

Illinois residents must meet all of the following requirements to be eligible for an Illinois High School Equivalency Certificate:

- attain a minimum Total Standard Score of 2,250 on the entire battery (average score of 450 on each test); AND
- attain a minimum Standard Score of 410 on each of the five GED Tests; AND
- attain a passing score on the Constitution Test

## INTERPRETING YOUR GED TEST RESULTS

Results on each of the five GED tests are given as standard scores ranging from 200-800 and percentile ranks ranging from 1-99. Higher scores result from correctly answering more test questions. Both scores compare your results to those for a recent representative national sample of high school seniors. The percentile rank shows the percentage of the graduating seniors who earned scores at or below those of the GED candidate.

The passing standard for the 2002 Series GED Tests is a minimum of 410 on each of the five tests AND a total standard score of 2,250 (an average score of 450 on each test). Adults who pass the GED Tests earn scores that meet or exceed the performance of that demonstrated by 4 of every 10 traditional high school graduates. Candidates who do not pass can retake the GED Tests in order to raise their scores.

DB

**ILLINOIS HIGH SCHOOL EQUIVALENCY TESTING PROGRAM**